In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 611

COLLIN COUNTY LEVEE IMPROVEMENT DISTRICT NO. 1, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE RECONSTRUCTION FINANCE CORPORATION IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 22–24) is reported at 208 F. 2d 396.

JURISDICTION

The judgment of the Court of Appeals was entered on December 9, 1953 (R. 25). A petition for rehearing was denied on January 12, 1954 (R. 29) and the petition for a writ of certiorari was filed on March 2, 1954. The jurisdiction of

this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, under the law of Texas, a lien to secure the payment of bonds issued by a levee improvement district existed upon lands within the district at the time they were condemned by the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of Texas, Article 16, Section 59a (c) (Vernon's Annotated Revised Civil Statutes of the State of Texas (1925)):

> The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as amy [may] be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for

any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted.

128 Texas Civil Statutes, Article 8012 (Vernon's Annotated Revised Civil Statutes of the State of Texas (1925)):

> When bonds have been issued by any levee improvement district, providing for the levy of taxes upon a benefit basis, the commissioners' court of the county, if the district is wholly within one county, or if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon and proportioned, as to each piece of property, to the net benefits which it shall have been found will accrue to such property from the completion of the plan of reclamation or other duly authorized work, which taxes shall be sufficient in amount to pay the interest on such bonds, as it shall fall due, and to raise an additional sum which will create a sinking fund sufficient to discharge and redeem such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. * * *

STATEMENT

This proceeding was instituted by the United States in July, 1950, to condemn lands for a dam and reservoir project (R. 8). At the same time, a declaration of taking was filed pursuant to the Declaration of Taking Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. 258a, and estimated compensation for the various tracts involved was deposited in court (R. 8). Much of the land was located within Collin County Levee Improvement District No. 1. That district had been organized in 1916 to build a levee to reclaim overflow bottom land. This work had been financed by issuance of a total of $199,200 of bonds. At the time of taking, all of the remaining bonds were owned by the Reconstruction Finance Corporation, totalling in principal amount some $39,000 (R. 2, 7).

In the condemnation proceedings, the Reconstruction Finance Corporation moved for distribution of enough of the amount deposited to satisfy the bonds. The landowners contested this motion except to the extent that annual payments were delinquent (R. 8–9). The trial court found the facts as above outlined, including the finding that the district does not have cash in its treasury for payment of the bonds (R. 9). It concluded that the Reconstruction Finance Corporation had a lien on the lands which attached to the amounts deposited. Accordingly, it ordered the necessary distribution from the amounts deposited for the

various tracts (R. 12–13). The Court of Appeals for the Fifth Circuit affirmed, holding that under the applicable constitutional and statutory provisions the bonds were a lien on the lands at the date of taking.

ARGUMENT

The narrow question involved in this case is whether liens attaching to lands in levee improvement districts under the constitution and laws of Texas cover the entire amount of the bonded indebtedness at the time the bonds are issued, or whether liens attach in the amount of the annual levies as they are assessed. The question is an insubstantial one which gives no difficulty if the indebtedness here involved—that is, the bonded indebtedness of the improvement district to the bondholders—is distinguished from the obligations of the landowners to the improvement district. With respect to the bondholders' claims under the Texas law, the entire indebtedness came into existence at the time the bonds were issued and the land within the district immediately became security for the fulfillment of the district's obligation. This is made clear beyond doubt in *Hidalgo & Cameron Counties, etc.* v. *American Rio Grande Land and Irrigation Co.*, 103 F. 2d 509 (C. A. 5).

The petitioners' assertion of a conflict with *People of Puerto Rico* v. *United States*, 134 F. 2d 267 (C. A. 1), certiorari denied, 320 U. S. 753, is apparently based on a failure to recognize that it arose as to a different claim under a different law.

In that case the court was dealing with the extent of liens held by an irrigation district as security for assessments against lands within the district. The court held that such liens were merely potential until assessment and levy took place, this holding being specifically based upon the provisions of the Puerto Rican law. Nor is there any conflict with *People of Puerto Rico* v. *United States,* 131 F. 2d 151 (C. A. 1), certiorari denied, 318 U. S. 775, where the question again was the time of attachment of liens for Puerto Rican real estate taxes on lands taken by the United States. No question relating to a lien securing outstanding bonds was involved.

The court below was not concerned with any question of general importance. Instead it was called on to construe the constitution and laws of Texas relating to Texas levee improvement bonds. The court's interpretation of the Texas law was completely in accord with the views heretofore expressed by the Texas courts. *Brown County Water Improvement District No. 1* v. *Austin Mill & Grain Co.,* 138 S. W. 2d 523; *Dallas Joint Stock Land Bank* v. *Ellis County Levee Improvement District No. 3,* 55 S. W. 2d 227.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.
PERRY W. MORTON,
Assistant Attorney General.
ROGER P. MARQUIS,
Attorney.

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